

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

In re REMICADE ANTITRUST LITIGATION)	Civil Action No. 2:17-cv-04326-KSM
)	(Consolidated)
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This Document Relates To:)	<u>CLASS ACTION</u>
)	
INDIRECT PURCHASER ACTIONS.)	The Honorable Karen S. Marston
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)	DECLARATION OF ALEXANDRA S. BERNAY IN SUPPORT OF PLAINTIFFS' UNCONTESTED MOTION FOR AN ORDER: (1) CERTIFYING A SETTLEMENT CLASS; (2) GRANTING PRELIMINARY APPROVAL OF THE SETTLEMENT AGREEMENT; (3) APPOINTING CLASS COUNSEL; (4) APPOINTING A SETTLEMENT ADMINISTRATOR AND ESCROW AGENT; (5) APPROVING THE FORM AND MANNER OF NOTICE TO THE SETTLEMENT CLASS; (6) PRELIMINARILY APPROVING THE PLAN OF ALLOCATION AND DISTRIBUTION; AND (7) SCHEDULING A FAIRNESS HEARING

I, ALEXANDRA S. BERNAY, declare as follows:

1. I am an attorney duly licensed to practice before all of the courts of the State of California and am admitted *pro hac vice* before this Court. I am a member of the law firm of Robbins Geller Rudman & Dowd LLP. My firm is one of counsel for Plaintiffs Local 295 IBT Employer Group Welfare Fund and National Employees Health Plan (the “Named Plaintiffs” or “Plaintiffs,”) in this Action. I make this declaration based on my personal knowledge and if called as a witness, I could and would competently testify to the matters stated herein.

2. I submit this declaration in support of Plaintiffs’ Uncontested Motion for an Order: (1) Certifying a Settlement Class; (2) Granting Preliminary Approval of the Settlement Agreement; (3) Appointing Class Counsel; (4) Appointing a Settlement Administrator and Escrow Agent; (5) Approving the Form and Manner of Notice to the Settlement Class; (6) Preliminarily Approving the Plan of Allocation and Distribution; and (7) Scheduling a Fairness Hearing.

3. Attached hereto as Exhibit 1 is a true and correct copy of the Stipulation of Class Action Settlement (“Settlement Agreement”) between Plaintiffs and Defendants Johnson & Johnson and Janssen Biotech, Inc. (“Defendants”) (collectively, the “Parties”).

4. Attached hereto as Exhibit 2 is a true and correct copy of Robbins Geller Rudman & Dowd LLP’s firm resume.

I. Background

5. In 2017, three putative class indirect-purchaser antitrust actions were filed against Defendants, alleging violations of various state and federal antitrust and state consumer-protection laws related to Defendants’ alleged anticompetitive conduct in the market for its infliximab biologic, Remicade. On November 21, 2017, these actions were consolidated under the caption *In re Remicade Antitrust Litigation*, No. 17-cv-04326-KSM (E.D. Pa.). On January 22, 2018, the Court appointed Interim Class Counsel and Interim Liaison Counsel for the putative indirect-purchaser

class. On February 21, 2018, a Consolidated Amended Complaint was filed on behalf of the putative class. On December 7, 2018, the Court denied in part and granted in part Defendants' motion to dismiss the Consolidated Amended Complaint.

6. I have overseen the Action since inception. Following the Court's December 7, 2018 Motion to Dismiss Order, the Parties engaged in extensive discovery. Plaintiffs served multiple requests for production of documents, participated in dozens of calls and discussions regarding discovery and took part in more than 30 depositions, including the defense of Plaintiffs' depositions. Millions of pages of documents were reviewed. Following the dismissal of *Pfizer Inc. v. Johnson & Johnson*, No. 2:17-cv-04180-KSM (E.D. Pa.) and *Walgreen Co. v. Johnson & Johnson*, No. 2:18-cv-02357-KSM (E.D. Pa.) actions in mid and late 2021, the indirect-purchaser Plaintiffs and Defendants began settlement negotiations. There were numerous rounds of discussions and after a long period of back and forth, the Parties were able to reach a final agreement. The settlement negotiations were conducted at arm's-length and in good faith, and were informed and approved by Plaintiffs. Throughout the process, Defendants were represented by experienced, sophisticated antitrust counsel. Counsel for Plaintiffs are similarly experienced and have decades of experience litigating antitrust class actions and are capable of fairly, reasonably, and adequately evaluating the early resolution of antitrust litigation.

7. During the initial investigation, litigation, and in relation to the Settlement, Plaintiffs researched, analyzed, and evaluated many contested legal and factual issues. In doing so, Plaintiffs recognized the facts and benefits, risks and consequences of continued litigation in comparison to the proposed Settlement. Plaintiffs thoroughly evaluated the relative strengths and weaknesses of their litigation position during the negotiation of this Settlement.

8. For the avoidance of any doubt, there was no discussion or agreement of any kind regarding the amount of attorneys' fees, costs, or service awards that Plaintiffs' counsel may seek from the Court relating to this Settlement.

9. Under the terms of the proposed Settlement, Defendants will deposit \$25,000,000 into a Settlement Fund within 15 days following the entry of an Order granting Preliminary Approval.

10. I have litigated numerous antitrust class actions and I have been a part of several settlements throughout the course of my career. In my opinion, the current Settlement Agreement is fair, reasonable, adequate and in the best interest of Plaintiffs. The Settlement provides substantial benefits to the Settlement Class and avoids the significant delays and uncertainties of continuing protracted and contentious litigation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 15th day of April, 2022, at San Diego, California.

s/ Alexandra S. Bernay
ALEXANDRA S. BERNAY

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on April 15, 2022, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the email addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ Alexandra S. Bernay

ALEXANDRA S. BERNAY

ROBBINS GELLER RUDMAN
& DOWD LLP

655 West Broadway, Suite 1900
San Diego, CA 92101-8498
Telephone: 619/231-1058
619/231-7423 (fax)

Email: xanb@rgrdlaw.com

Mailing Information for a Case 2:17-cv-04326-KSM NATIONAL EMPLOYEES HEALTH PLAN v. JOHNSON & JOHNSON et al

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **SARA A. ARROW**
sarrow@pbwt.com, mcolitigation@pbwt.com
- **GREGORY S. ASCIOLLA**
gasciolla@dicellolevitt.com, 8428016420@filings.docketbird.com, 8567571420@filings.docketbird.com, asaldana@dicellolevitt.com
- **RANDI D. BANDMAN**
randib@rgrdlaw.com, susanm@rgrdlaw.com
- **THOMAS O. BARNETT**
tbarnett@cov.com
- **ASHLEY E. BASS**
abass@cov.com
- **NATALIE FINKELMAN BENNETT**
nfinkelman@millershah.com, smoss@millershah.com, pleadings@millershah.com
- **ALEXANDRA S. BERNAY**
xanb@rgrdlaw.com, e_file_sd@rgrdlaw.com, dwatts@rgrdlaw.com
- **JEFFREY CAO**
jcao@cov.com
- **WILLIAM F. CAVANAUGH, JR**
wfcavanaugh@pbwt.com, mcolitigation@pbwt.com
- **AUSTIN BLAIR COHEN**
acohen@lfsblaw.com
- **PATRICK J. COUGHLIN**
patc@rgrdlaw.com, susanm@rgrdlaw.com
- **FRANK T. DAVIS, JR**
ftd@fbdlaw.com
- **ROSS E. ELFAND**
relfand@whitecase.com, jdisanti@whitecase.com, mco@whitecase.com, ogierke@whitecase.com
- **EMMA ELLMAN-GOLAN**
eellmangolan@pbwt.com
- **JOSEPH GOLDBERG**
jg@fbdlaw.com, ftd@fbdlaw.com, sdr@fbdlaw.com, drt@fbdlaw.com, acs@fbdlaw.com, vjw@fbdlaw.com
- **JAYNE A. GOLDSTEIN**
jagoldstein@millershah.com, pleadings@millershah.com
- **NICHOLAS T. HART**
nick@harrisonhartlaw.com, carter@harrisonhartlaw.com
- **JONATHAN H. HATCH**
jhatch@pbwt.com
- **LESLIE E. JOHN**
john@ballardspahr.com, LitDocket_East@ballardspahr.com, omalleyLB@ballardspahr.com
- **JEFFREY F. KINKLE**
jkinkle@pbwt.com
- **NOLAN C. KNIGHT**
nknight@munsch.com, aberry@munsch.com
- **GEORGE A. LOBIONDO**
globiondo@pbwt.com
- **ADEEL A. MANGI**
aamangi@pbwt.com, mcolitigation@pbwt.com

- **ABIGAIL E. MARION**
amarion@pbwt.com,mcolitigation@pbwt.com
- **CARMEN A. MEDICI**
cmedici@rgrdlaw.com,slandry@rgrdlaw.com,e_file_sd@rgrdlaw.com,ckopko@rgrdlaw.com
- **DAVID W. MITCHELL**
DavidM@rgrdlaw.com,E_File_SD@rgrdlaw.com
- **BRIAN O. O'MARA**
bomara@rgrdlaw.com,e_file_sd@rgrdlaw.com
- **CHARLES R. PEIFER**
cpeifer@peiferlaw.com,mjackson@peiferlaw.com,wboyd@peiferlaw.com,mfargelara@peiferlaw.com,igarcia@peiferlaw.com,charrison@peiferlaw.com
- **SCOTT E. PERWIN**
sperwin@knpa.com,aneill@knpa.com,dwilliams@knpa.com,mmitchell@knpa.com
- **ARTHUR L. SHINGLER , III**
ashingler@rgrdlaw.com
- **DENNIS STEWART**
dstewart@gustafsongluck.com,DJakubauskiene@gustafsongluck.com
- **WHITNEY E. STREET**
WhitneySt@hbsslaw.com,whitney-street-0082@ecf.pacerpro.com,jeff@blockesq.com
- **STEPHANIE TEPLIN**
steplin@pbwt.com,mcolitigation@pbwt.com
- **VINCENT J. WARD**
vjw@fbdlaw.com
- **CAROL WEILAND**
cweiland@cov.com
- **ELIZABETH WINGFIELD**
wingfelde@ballardspahr.com,elizabeth.victoria.wingfield@gmail.com
- **DANHUI XU**
dxu@pbwt.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

JONAH M. KNOBLER
PATTERSON BELKNAP WEBB & TYLER LLP
1133 AVENUE OF AMERICAS
NEW YORK, NY 10036